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Attorneys for Defendant ABILENE  
MOTOR EXPRESS, INC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LARRY GRAVESTOCK, individually,  
and on behalf of other members of the  
general public similarly situated,

Plaintiff,

vs.

ABILENE MOTOR EXPRESS, INC., a  
Virginia corporation, and DOES 1-10,  
inclusive,

Defendants.

CASE NO. 8:14-cv-00170-JVS-RNB

The Hon. James V. Selna  
Courtroom 10C

**DEFENDANT ABILENE MOTOR  
EXPRESS, INC.'S EX PARTE  
APPLICATION FOR ORDER  
EXTENDING TIME TO RESPOND  
TO PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO  
DISMISS; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF ANNA KIM**

[Filed concurrently with [Proposed]  
Order]

Hearing Date: March 17, 2014  
Hearing Time: 1:30 p.m.  
Courtroom: 10C

Action Filed: December 19, 2013  
Trial Date: None Set

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1 TO THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF  
2 RECORD:

3 NOTICE IS HEREBY GIVEN that Defendant Abilene Motor Express, Inc.  
4 ("Defendant") makes this *Ex Parte* Application for an Order extending the time to  
5 file a Reply to Plaintiff Larry Gravestock's ("Plaintiff") Opposition to Defendant's  
6 Motion to Dismiss Plaintiff's Meal and Rest Break Claims Pursuant to Federal Rule  
7 of Civil Procedure 12(b)(6).

8 Federal Rule of Civil Procedure 6(b) authorizes a court, for good cause, to  
9 extend the time to file a Reply. Good cause exists for this Application. Defendant  
10 filed a Motion to Dismiss Plaintiff's Meal and Rest Break Claims on February 11,  
11 2014. Plaintiff filed its Opposition to Defendant's Motion to Dismiss on February  
12 24, 2014. As the Motion is set for hearing on March 17, 2014, the deadline for a  
13 Reply to be filed was March 3, 2014. Due to a good faith mistake and excusable  
14 neglect, the deadline to file the Reply was incorrectly computed as March 10, 2014.

15 Defendant seeks an order extending the time to file a Reply to Plaintiff's  
16 Opposition until March 10, 2014. Issuing such an order will promote judicial  
17 economy and efficiency, and allow the instant Motion to be considered on all its  
18 merits.

19 This Application is made pursuant to Local Rules 7-19 and 7-19.1. On March  
20 5, 2014, notice was given to counsel for all parties, set forth below, advising that  
21 this Application would be filed:

22 Shawn C. Westrick, Esq.

23 E-mail: [swestrick@kswlawyers.com](mailto:swestrick@kswlawyers.com)

24 Karen Majovski, Esq.

25 E-mail: [kmajovski@kswlawyers.com](mailto:kmajovski@kswlawyers.com)

26 1990 S. Bundy Drive, Suite 280

27 Los Angeles, California 90025

28 Telephone: (310) 746-5300

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1 This Application is supported by this Notice, the Memorandum of Points and  
2 Authorities attached, the Declaration of Anna Kim, the Court's files, and such  
3 further evidence and argument as the Court may require.

4 DATED: March 6, 2014

Respectfully submitted,

5 **LEWIS BRISBOIS BISGAARD &**  
6 **SMITH LLP**

7  
8  
9 By: 

Anna Kim

10 Attorneys for Defendant Abilene Motor  
11 Express, Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a wage and hour class action in which Plaintiff Larry Gravestock  
4 (“Plaintiff”) alleges Defendant Abilene Motor Express, Inc. (“Defendant”) violated  
5 numerous California labor laws. On February 11, 2014, Defendant moved to  
6 dismiss two of Plaintiff’s nine causes of action pursuant to Federal Rule of Civil  
7 Procedure 12(b)(6). Plaintiff filed an Opposition to Defendant’s Motion to Dismiss  
8 on February 24, 2014. The Motion is set for hearing on March 17, 2014, making  
9 March 3, 2014 the deadline to file a Reply to Plaintiff’s Opposition to the Motion.  
10 Defendant now seeks an extension of time to file its Reply.

11 **II. GOOD CAUSE EXISTS TO EXTEND THE TIME TO FILE A REPLY**  
12 **TO PLAINTIFF’S OPPOSITION**

13 Federal Rule of Civil Procedure 6 provides as follows:

- 14 (1) In General. When an act may or must be done within a  
15 specified time, the court may, for good cause, extend the time:  
16 (A) with or without motion or notice if the court acts, or if a  
17 request is made, before the original time or its extension expires;  
18 or  
19 (B) on motion made after the time has expired if the party failed to  
20 act because of excusable neglect.

21 As the herewith filed Declaration of Anna Kim demonstrates, good cause  
22 exists to extend the time to respond. Lewis Brisbois Bisgaard & Smith LLP utilizes  
23 an electronic system called “eDockets,” which manages and automatically generates  
24 critical court dates and filing deadlines, in accordance to applicable court rules.  
25 [See Declaration of Anna Kim (“Kim Decl.”) ¶ 3.] Thus, when the instant action  
26 was first filed in the Orange County Superior Court, eDockets generated critical  
27 dates and deadlines in accordance to California state court and local rules. [Kim  
28 Decl. ¶ 3.] When the matter was removed to federal court on February 5, 2014,  
however, due to an irregular error, the case was not updated on eDockets to be

1 managed under the federal court rules. [Kim Decl. ¶ 3.] As such, the deadline to  
 2 file the Reply to Plaintiff's Opposition was incorrectly calendared as March 10,  
 3 2014 (under the state rules), as opposed to March 3, 2014 (under the federal rules).  
 4 [Kim Decl. ¶ 3.]

5 As this error was due to mistake and/or excusable neglect, and was entirely in  
 6 good faith, upon realizing the error, counsel for Defendant immediately attempted to  
 7 obtain a stipulation for an extension directly from Plaintiff's counsel to file the  
 8 Reply. [Kim Decl. ¶ 4.] Counsel for Defendant also informed Plaintiff's counsel of  
 9 their intent to seek ex parte relief. [Kim Decl. ¶ 4.] However, Plaintiff's counsel  
 10 refused to stipulate. [Kim Decl. ¶ 4.] Thus, counsel for Defendant decided to seek  
 11 ex parte relief from this Court to respond to Plaintiff's Opposition.

12 If the Court grants the relief requested, Plaintiff will not be prejudiced as  
 13 Plaintiff suggests. The filing of Defendant's Reply does not require any further  
 14 filings on behalf of Plaintiff as no sur-reply is mandated or even allowed.  
 15 Defendant has not, and does not, in any way intend to use the extended time to  
 16 Plaintiff's disadvantage. This does, however, affect the Court in terms of time to  
 17 review all filings in preparation of issuing a ruling. Should this be the case,  
 18 Defendant would suggest continuing the hearing to a date more convenient to the  
 19 Court in order to accommodate this request.

20 Moreover, the instant Motion is a substantive motion in this class action  
 21 litigation that will have a significant impact on both Defendant and the putative  
 22 class members. Granting the relief requested will thus allow this matter to be  
 23 considered on its merits. Further, as Defendant's proposed Motion to Dismiss is  
 24 meritorious, granting the relief requested will promote judicial economy and  
 25 efficiency by expediting the resolution of Plaintiff's claims.

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1 **III. CONCLUSION**

2 Based on the foregoing, Defendant respectfully requests that this Court grant  
3 the relief requested and extend the time to respond to Plaintiff's Opposition to  
4 Defendant's Motion to Dismiss until March 10, 2014.

5  
6 DATED: March 6, 2014

Respectfully submitted,

7 **LEWIS BRISBOIS BISGAARD &**  
8 **SMITH LLP**

9  
10  
11 By: 

Anna Kim

12 Attorneys for Defendant Abilene Motor  
13 Express, Inc.

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

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MOTOR EXPRESS, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LARRY GRAVESTOCK, individually,  
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general public similarly situated,

Plaintiff,

vs.

ABILENE MOTOR EXPRESS, INC., a  
Virginia corporation, and DOES 1-10,  
inclusive,

Defendants.

CASE NO. 8:14-cv-00170-JVS-RNB

The Hon. James V. Selna  
Courtroom 10C

**DECLARATION OF ANNA KIM IN  
SUPPORT OF DEFENDANT  
ABILENE MOTOR EXPRESS,  
INC.'S EX PARTE APPLICATION  
FOR ORDER EXTENDING TIME  
TO RESPOND TO PLAINTIFF'S  
OPPOSITION TO DEFENDANT'S  
MOTION TO DISMISS**

Hearing Date: March 17, 2014  
Hearing Time: 1:30 p.m.  
Courtroom: 10C

Action Filed: December 19, 2013  
Trial Date: None Set

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4833-1156-4825.1



**DECLARATION OF ANNA KIM**

I, Anna Kim, declare as follows:

1. I am an attorney at law, duly licensed to practice before all of the Courts of the State of California and am an associate with the law firm of Lewis Brisbois Bisgaard & Smith LLP, attorneys of record for ABILENE MOTOR EXPRESS, INC. ("Defendant"). I am one of the attorneys principally responsible for the instant matter. All of the facts set forth in this Declaration are of my own personal knowledge and I could and would competently testify thereto.

2. This declaration is submitted in support of Defendant's Ex Parte Application for an order to extend the time for Defendant to file a Reply to Plaintiff Larry Gravestock's ("Plaintiff") Opposition to Defendant's Motion to Dismiss (hereinafter "Application").

3. My firm, Lewis Brisbois Bisgaard & Smith LLP, utilizes an electronic system called "eDockets," which manages and automatically generates critical court dates and filing deadlines, in accordance to applicable court rules. Thus, when the instant action was first filed in the Orange County Superior Court, eDockets generated critical dates and deadlines in accordance to California state court and local rules. When the matter was removed to federal court on February 5, 2014, however, eDockets did not update the case to be managed under the federal court rules. As such, the deadline to file the Reply to Plaintiff's Opposition was incorrectly calendared as March 10, 2014 (under the state rules), as opposed to March 3, 2014 (under the federal rules).

4. Due to mistake, inadvertence and/or excusable neglect, I first became aware of this situation on March 5, 2014, upon communication with Plaintiff's counsel. I immediately sent Plaintiff's counsel a letter via electronic mail, attempting to obtain a stipulation from Plaintiff's counsel for an extension of time to file Defendant's Reply to Plaintiff's Opposition to the Motion. I also informed Plaintiff's counsel of my intent to file an ex parte application for an order to extend



1 the time to file a Reply. I explained that this was an honest calendaring error.

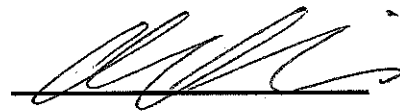
2 5. Plaintiff's counsel refused to stipulate to extending the time for  
3 Defendant to file a Reply. Plaintiff's counsel expressed concern that such an  
4 extension of time would be unfair to Plaintiff.

5 6. I have not, and do not, in any way intend to use the extension of time to  
6 prejudice or disadvantage Plaintiff with regard to the instant Motion.

7 7. It is respectfully submitted that the Court should grant an extension of  
8 time for Defendant to file its Reply to Plaintiff's Opposition to the Motion to  
9 Dismiss, so that the matter will be considered on its merits. The instant Motion is a  
10 substantive motion in this class action litigation that will have a significant impact  
11 on both Defendant and the putative class members. Defendant respectfully seeks  
12 the opportunity to properly assert all arguments and defenses to which it is legally  
13 entitled, in response to Plaintiff's Opposition.

14 8. Defendant has not previously filed any applications for an order  
15 extending the time for the filing of a motion, opposition, or reply brief.

16 I declare under penalty of perjury under the laws of the United States of  
17 America that the foregoing is true and correct and that this Declaration was executed  
18 on March 6, 2014 at Los Angeles, California.

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21 

22 Anna Kim  
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**FEDERAL COURT PROOF OF SERVICE**

Larry Gravestock v. Abilene Motor Express, Inc. - File No. 32571.145

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 221 North Figueroa Street, Suite 1200, Los Angeles, CA 90012. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On March 6, 2014, I served the following document(s): **DEFENDANT ABILENE MOTOR EXPRESS, INC.'S EX PARTE APPLICATION FOR ORDER EXTENDING TIME TO RESPOND TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ANNA KIM**

I served the documents on the following persons at the following fax number:

Shawn C. Westrick, Esq.  
E-mail: [swestrick@kswlawyers.com](mailto:swestrick@kswlawyers.com)  
Karen Majovski, Esq.  
E-mail: [kmajovski@kswlawyers.com](mailto:kmajovski@kswlawyers.com)

Attorneys for Plaintiff and Class  
Members  
LARRY GRAVESTOCK

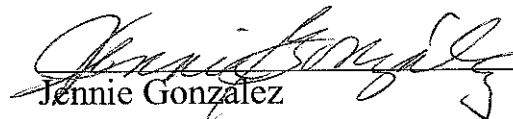
KAWAHITO SHRAGA  
& WESTRICK LLP  
1990 S. Bundy Drive, Suite 280  
Los Angeles, California 90025  
Telephone: (310) 746-5300  
Facsimile: (310) 593-2520

The documents were served by the following means:

- ☒ (BY FAX TRANSMISSION) Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission containing the time, date, and sending fax machine telephone number, which I printed out, is attached.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on March 6, 2014, at Los Angeles, California.

  
Jennie Gonzalez